## Subject Index

## Table of Authorities Cited

## Codes



## Constitutions



## Resolutions



## Rules



## Statutes

**Other Authorities** Pages

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1971

No. 71-708

PAUL J. TRAFFICANTE, et al.,
*Petitioners,*

VS.

METROPOLITAN LIFE INSURANCE COMPANY, et al.,
*Respondents.*

**On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit**

## BRIEF FOR THE CITY OF PALO ALTO, CALIFORNIA AS AMICUS CURIAE

### OPINIONS BELOW

The opinion of the District Court for the Northern District of California dismissing the Complaint and Complaint in Intervention in these proceedings is reported at 322 F.Supp. 352 (N.D. Cal. 1971). The opinion of the Court of Appeals for the Ninth Circuit is reported at 446 F.2d 1158 (9th Cir. 1971).

## JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on August 9, 1971. Thereafter, a petition for a rehearing *en banc* was denied by the Court of Appeals on September 13, 1971. The jurisdiction of this Court is conferred by 28 U.S.C. §1254 (1).

---

## STATUTES INVOLVED

The statutes involved are Title VIII of the 1968 Civil Rights Act (Fair Housing) (42 U.S.C. §§3601, *et seq.*) and 42 U.S.C. §1982.

---

## QUESTION PRESENTED

Do black and white tenants of a large apartment complex have standing, under Title VIII of the 1968 Civil Rights Act (Fair Housing) (42 U.S.C. §§3601, *et seq.*) and/or 42 U.S.C. §1982, to complain of racially discriminatory rental practices by their landlord?

---

## INTEREST OF THE AMICUS CURIAE

The City of Palo Alto, California, is a municipal corporation, existing as a charter city pursuant to California Constitution, Article II, Section 3. It is located on the "mid-peninsula" approximately thirty miles south of San Francisco, west of San Francisco Bay, and immediately adjacent to Stanford University. It contains an area of approximately 25 square miles and a population of approximately 56,-

000. It is one of a continuous string of suburban cities west of the Bay, stretching fifty miles from San Francisco south to San Jose, whose overall population is approximately 2,377,000. Governmentally, it is a part of Santa Clara County, the population of which is approximately 1,100,000.

The city government of Palo Alto as well as certain private segments within it are continuously endeavoring to provide a racially balanced, integrated community. On September 15, 1969, the Palo Alto City Council adopted a "Housing Element" to its General Plan (Resolution No. 4302).[1] Among other community housing goals stated therein are

> "To encourage a physical environment which will attract a broad spectrum of people of various interests, *races,* religions, occupations and ages to reside in Palo Alto in order to provide a fullness of social interrelationships . . .
>
> "To encourage, in proper balance to the economic and social requirements of the people of Palo Alto, the development of a variety of residential choices" (emphasis added).

---

[1]Cal. Gov. Code §65302(c) prescribes that the general plan shall include:

> "A housing element, to be developed pursuant to regulations established under Section 37041 of the Health and Safety Code, consisting of standards and plans for the improvement of housing and for provision of adequate sites for housing. This element of the plan *shall* make adequate provision for the housing needs of *all* economic segments of the community" (emphasis added).

Cal. Health and Safety Code §37041 requires that the State Commission of Housing and Community Development, in cooperation with the State Council on Intergovernmental Relations and State Office of Planning, develop guidelines for such housing elements by July 1, 1971, to conform to those promulgated by the U. S. Department of Housing and Urban Development (hereafter "HUD").

(Id. at 2, 3). The work program to achieve these goals and to counter the narrowing spectrum of people who can live in Palo Alto consists, in part, of the following: the establishment of low-moderate income households; protecting the ability of *all* housing consumers to choose and occupy housing without discrimination; review of building codes with low and moderate income housing in mind; and the alleviation of housing needs of those displaced by governmental action. (Id. at 9, 10).

On a private level, two of the most active and effective organizations which have fair housing as their main concern are the Mid-Peninsula Citizens for Fair Housing and Stanford Mid-Peninsula Urban Coalition and Operation Sentinel. The former is based in Palo Alto, the latter at Stanford. The Mid-Peninsula Citizens group has a 17-member board of directors, a small budget and many volunteers (about 150-200 available volunteers including trained auditors and testers). Its goal is "to secure for all individuals an equal opportunity to purchase or rent property where they choose."[2]

Despite these and other substantial public and private efforts to achieve fair housing, there still exists

[2]For a study discussing these organizations in greater depth, see Deutsch, Fair Housing in Santa Clara County, pp. 26-27, 1971; Santa Clara County Planning Department, Joint Cities-County Housing Element Program, No. 10, partially financed by a HUD planning grant pursuant to §701 of the Housing Act of 1954 (now 40 U.S.C. §461). The Joint Cities-County Housing Element Program has published a series of pamphlets on county-wide housing problems (hereafter "SCC-JCCHEP"). The County of Santa Clara and 15 cities within its boundaries cooperated in this effort under the HUD §701 grant.

a disturbingly high incidence of housing discrimination both in Palo Alto, the Mid-Peninsula, and Santa Clara County. In 1969 the County of Santa Clara published a report entitled "The Housing Situation: 1969."[3] It states in part:

> "There is evidence that in at least some areas of the County there has been a movement toward economic and racial/ethnic integration. *It cannot be too heavily stressed, however, that a trend toward segregation has dominated the pattern of change since 1960.* It is desirable that there be differentiation between areas in terms of the character of their housing, environment and populations; but it is detrimental to restrict housing choice by denying an increasing population of residential areas to persons with low to moderate incomes or to minorities . . ." (emphasis added).[4]

More recent surveys by the Mid-Peninsula Citizens for Fair Housing indicate that there appeared to be discrimination against blacks in the rental of apartments in 63 per cent of the 43 buildings contacted in Menlo Park, California, the next city to the north

---

[3]SCC-JCCHEP, The Housing Situation: 1969 (1969).

[4]Id. at 62. Two other publications in this series reach the same conclusion. SCC-JCCHEP, Social Concerns in Housing, 11, 19 (1971), states:

> ". . . segregation is becoming more rather than less pronounced. Local and regional activities to reverse this trend have remained in the domain of small, volunteer private groups. While the efforts of these groups are noteworthy, the size of the problem requires an equally sizable effort." (Id. at 19).

Also, SCC-JCCHEP, The Joint Housing Element: 1971, 1, 6, 105, 106 (1971).

of Palo Alto;[5] 58 per cent of 43 apartment buildings in Palo Alto itself;[6] 41 per cent of 73 buildings in Mountain View, the next city to the south of Palo Alto;[7] 54 per cent of 77 buildings in Sunnyvale, the next city to the south of Mountain View.[8]

---

[5]Palo Alto Times, February 25, 1972, at 1, col. 5. The procedures used in these surveys follow:

"1. 20 auditors participated. They all either lived or worked in Palo Alto. Several are teachers or administrators in local school districts; three are housewives. Others are 'professionals', including two lawyers and one nurse.

2. A list of apartment developments in Palo Alto was unavailable from City Hall. The list of apartment developments and their size was compiled from about 50 hours of on-site inspection of areas zoned for apartments, multi-family dwellings and planned communities.

3. The audit was conducted by teams. Each team consisted of one black person and one white person, with matching qualifications. Within each team, effort was made to eliminate all variables except race.

4. Each team audited specific apartment developments. Each auditor visited independently the assigned developments, asked if there were any vacancies, and determined the terms and conditions of rental. Both auditors visited a given development within a few hours of each other. Each auditor filled out a standard form to record his experience at each development. These written reports provided the data for this report." (Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, 3, 1971 (unpublished report available at organization office, 460 California Avenue, Palo Alto, California 94306)).

In Menlo Park, between January 22, 1972, and February 14, 1972, auditors visited 30 apartment buildings, containing 965 units, about 40 per cent of all units in the city. It found evidence of discrimination in 19 of the 30 buildings.

[6]Palo Alto Times, supra, note 5. Full details of this survey are reported in Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, supra, note 5. This survey was conducted between July 7-October 13, 1971, at 43 apartment buildings, containing 2632 units, or some 38 per cent of all such units in the city.

[7]Palo Alto Times, supra, note 5; Deutsch, Fair Housing in Santa Clara County, supra, note 2, at 26. The 73 buildings contained 4100 units, or some 16 per cent of all such units in the city.

[8]Palo Alto Times, supra, note 5; Deutsch, Fair Housing in Santa Clara County, supra, note 2, at 26. The 77 buildings contain 5455 units, or some 75 per cent of all such complexes having over 20 apartments in the city.

In Santa Clara County it is recognized both governmentally and privately that, while tremendous efforts must be continued on both levels to provide fair housing, they alone will not meet the problem sufficiently.[9] The County of Santa Clara, Planning Policy Committee has recommended adoption of various housing goals by all cities and the county similar

---

[9]The Planning Policy Committee of Santa Clara County recognizes the real limits of governmental action alone.

"Housing is produced and maintained by private actions. Solutions . . . depend to a very considerable extent upon an understanding of the actions and potential of the private housing market. The role of government is largely to encourage private attempts to improve the housing situation, to regulate abuses in the housing market, and to take direct action when the private market fails to meet critical housing needs." SCC-JCCHEP, The Joint Housing Element: 1971, supra, note 4, at 73.

The report also cites the ineffectiveness of governmental action to date, both federal, state and local, to substantially reduce discrimination and other housing problems. Id. at 78-79. Furthermore, the Rumford Fair Housing Act of California, Cal. Health and Safety Code §§35700 et seq., purports to preempt the regulation of housing discrimination (Cal. Gov. Code §35743), although this position is not necessarily accepted by all local governmental agencies. Because of this, the report concludes (whether rightly or not) that "The basic legal enforcement of fair housing . . . has been left to the federal government." Id. at ix.

Similarly, on the basis of interviews with real estate brokers, financial institutions, housing developers, apartment managers, confidential questionnaires completed by public and private agencies, and a review of fair housing laws at all governmental levels, Deutsch concludes: "There is no effective government agency in Santa Clara County working to enforce or promote compliance with the fair housing laws." Deutsch, Fair Housing in Santa Clara County, supra, note 2, at 32. That report concludes that both HUD and the state administrative enforcement agency, are remote, slow, understaffed, offer very limited relief, and are not trusted by minorities who view them merely as part of the very establishment which discriminates against them. Nor does the report find that there exists any effective private agency, whether minority or non-minority operated. Id. at 7, 19, 33. Significant in this regard is the following comment: ". . . there is little political pressure generated by minority groups in the county to influence the county and city governments to take more active roles in the area of fair housing." Id. at 33.

to those stated in the Palo Alto Housing Element of the General Plan.[10] One of these goals declares it to be a matter of public policy "To insure the provisions of decent housing for all persons, regardless of age, income, race, or ethnic background."[11]

It is also worth noting one comment of the Planning Policy Committee's report. Discussing the results of two 1970 studies which attempted to identify housing needs as perceived by groups of county residents, the report states:

> "Mexican Americans were shown to have lower perceived needs for housing space than other groups and also to have the greatest disparity between what they perceived that they needed and what they actually had. The sociological study concluded that Mexican-Americans are 'by far the most likely to consider themselves "deprived" even allowing for the fact that their perceptions of what they should have are the lowest.' The anthropologists indicated that Mexican-Americans place a very high value on owing or occupying single family dwellings."[12]

This comment recognizes the reality that few people who are the direct victims of discrimination actually take advantage of remedies available to them. Those unlikely to perceive their housing needs are even less likely, given all their other pressing and immediate family problems, to be thinking, let alone knowledgeable, about their legal rights. Even if they were so

---

[10]See text pp. 2-3 supra.

[11]SCC-JCCHEP, The Joint Housing Element: 1971, supra, note 4, at 136, app. A-1.

[12]Id. at 67.

percipient, very few will have the money necessary to pursue their rights. Furthermore, this tendency to be something less than percipient about their housing needs will undoubtedly leave many minority applicants for housing totally unaware that discrimination has been practiced against them. This is due in as large measure to the sophisticated methods of rejection of minority applicants born of the experience of landlords, owners, brokers, etc., as it is to the lack of experience of the minority applicants. The applicant is totally at the mercy of the discriminator as to the truth or falsity of the reason given for rejection. Needless to say, this reduces the likelihood of pursuit of available legal remedies to an insignificant level as against the very high incidence of discriminatory practices.

It needs no citation of authority that both cities, states and the federal government inevitably suffer and pay a great and unnecessary price when racial discrimination is permitted to injure minority applicants for housing. In addition to its primary purpose of benefiting minorities who are the direct victims of discrimination through the passage of the Fair Housing Act of 1968, Congress no less recognized the key importance of local government involvement in achieving its objectives. That Act, among other things, requires the Secretary of HUD to

> "make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, *suburban,* and rural . . . (emphasis added)[13]

[13] 42 U.S.C. §3608(d)(1).

and to

> "cooperate with and render technical assistance to Federal, State, *local,* and other public or private agencies which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices." (Emphasis added.)[14]

The Act also requires the Secretary to

> "consult with State and *local* officials . . . to learn the extent, if any, to which housing discrimination exists in their State or *locality,* and whether and how State or *local* enforcement programs might be utilized to combat such discrimination . . ." (emphasis added).[15]

These statements reflect a congressional recognition that local government is inextricably tied into the problem of housing discrimination and will benefit by its elimination.

---

[14] 42 U.S.C. §3608(d)(3).

[15] 42 U.S.C. §3609. It is also instructive and relevant to note the provision of federal statutes which establish the U. S. Department of Housing and Urban Development. In 42 U.S.C. §3531, Congress

> "declares that the general welfare and security of the Nation and the health and living standards of our people require, as a matter of national purpose, sound development of the Nation's *communities* and metropolitan areas in which the vast majority of its people live and work.
>
> "To carry out such purpose, and in recognition of the increasing importance of housing and urban development in our national life," [Congress established HUD] "to assist the President in achieving maximum coordination of the various Federal activities which have a major effect upon urban community, *suburban,* or metropolitan development; to encourage the solution of problems of housing, urban development, and mass transportation through State, *county, town, village or other local* and private action . . . and to provide for full and appropriate consideration, at the national level, of the needs and interests of the Nation's *communities* and of the people who live and work in them." (Emphasis added.)

Congress has clearly declared its commitment to the policy of providing "for fair housing throughout the United States."[16] Yet, the Department of Justice concedes

> "that if all litigation of this kind is left to the Attorney General, the Congressional policy in favor of swift elimination . . . of the inequities caused by racial discrimination in housing will be severely hampered, to the injury of the United States and its citizens."[17]

The Ninth Circuit below held that black and white tenants do not have standing to complain of racial discrimination by their landlord against minority applicants. It intimates, further, that only the Attorney General can maintain such actions. The Attorney General pleads inadequate resources.[18]

A substantial level of discrimination exists throughout the County of Santa Clara, including Palo Alto. It may fairly be assumed that such a level is more or less indicative of the national level. This situation persists despite significant local public and private efforts to the contrary. To that extent, the achievement of the public policy of the City of Palo Alto, i.e., to provide a racially balanced, integrated community with equal opportunity in housing for all, is being thwarted. This frustration of adopted city policies is a direct and real injury to the legitimate, rec-

---

[16]42 U.S.C. §3601.

[17]Brief for the United States as Amicus Curiae, at 36, *Trafficante, et al. v. Metropolitan Life Insurance Company, et al.*, 446 F.2d 1158 (9th Cir. 1971).

[18]Id. at 33-36.

ognizable interests of the citizens of Palo Alto in cultural, social and psychological terms as well as economic terms. The injury resulting from the social waste caused by discrimination in housing is equally as significant as the injury that would result from a physical waste of its resources. In this sense, the existence of housing discrimination is inimical and injurious to the public health, safety, morals and welfare.

Congress has declared its policy of fair housing and its goal of integrating communities throughout the country. It is clear that minority applicants for housing do not now, nor is it very likely in the immediate future that they will, take advantage of their legal remedies under the Fair Housing Act of 1968. The Attorney General of the United States has clearly indicated his inability to enforce the provisions of the Act nationwide on a level that will even begin to achieve the Congressional purpose. Unless tenants, such as the plaintiffs in the instant case, are permitted to complain of racially discriminatory rental practices of their landlords, this evil will continue to gut the resources and energies of cities throughout the country, not to mention the demoralization and degradation it will work upon minorities and the deprivation of plaintiffs' rights.

We, therefore, believe that the decision of the Ninth Circuit is wrong as a matter of law. Since the City of Palo Alto, like every other city and county in the country, has a direct and compelling interest in the outcome of this litigation and stands to benefit by a

result favorable to petitioners, we believe we should exercise our right, pursuant to U S. Supreme Court Rule 42(4), to express our view to the Court urging reversal of the decision of the Ninth Circuit.

---

## ARGUMENT

### I.

### THE INJURY TO THE RIGHT OF INTERRACIAL ASSOCIATION OF BLACK AND WHITE TENANTS OF A LARGE APARTMENT COMPLEX CAUSED BY RACIALLY DISCRIMINATORY PRACTICES OF THEIR LANDLORD IS SUFFICIENT TO GRANT THEM STANDING TO SUE UNDER THE FAIR HOUSING ACT OF 1968 AND THE CIVIL RIGHTS ACT OF 1866, §1982.

#### A. The Statutes Involved are Consistent With Plaintiffs' Right to Sue.

Congress has broadly declared it to be "the policy of the United States to provide . . . for fair housing throughout the United States." (42 U.S.C. §3601). 42 U.S.C. §§3604, 3605, and 3606 respectively prohibit discrimination in the sale or rental of housing, financing of housing, and provision of brokerage services. 42 U.S.C. §3610 defines a "person aggrieved" as:

> "Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be irrevocably injured by a discriminatory housing practice that is about to occur . . ."

The term, "person," defined at 42 U.S.C. §3602(d),

> ". . . includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies,

joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries."

§3612(a) broadly states that:

"The rights granted by sections 3603, 3604, 3605, and 3606 . . . may be enforced by civil actions . . ." (emphasis added).

Nothing in any of this language limits the right to sue to anyone other than a "person", in the broadest sense of the term, except as limited only by §3602(d). Quite clearly, Congress could have set forth various limitations. That it did not do so indicates that the Ninth Circuit incorrectly found that only "direct victims" may sue (446 F.2d at 1163, 1164), and thereby unreasonably limited the intent of Congress. Nor is there anything in any of the provisions of the Act to suggest that only members of a minority or non-white persons may sue.

It cannot seriously be argued that either the statutory language or purpose support the view of the Ninth Circuit. Rather, Congress intended that the Fair Housing Act be remedial in every sense of the word, and that action should be encouraged as broadly as possible to eliminate housing discrimination.

As pointed out in a quote by the Attorney General in its *amicus curiae* brief, in the court below, the Congressional

"debates suggest a recognition of the harm which segregated housing inflicts on all members of the

public, white as well as black and on the need for action on many fronts to combat it . . .

> " 'The damage of racial injustice and segregation in housing is greatest on the colored people but it is placing a *heavy burden on white Americans, all Americans, too.* (emphasis added)
>
> " 'The money cost is high; the financial cost of extra services for health, education, welfare, and police. We damage people and then we have to pay a burden which the larger community must bear. Meanwhile, in the very cities where these costs are greater, the tax base in property and the ability to pay income taxes is undermined by the very ills brought by the discriminatory practices. If colored people pay heavily in health, family life, waste of talent, and psychological ways, the majority white population pays heavily too. It pays a tremendous bill in taxes. It also pays by living in a deteriorating situation in which the security of persons and property is endangered.' "[19]

Cities, perhaps more than any other entities, understand the tremendous economic and social price to be paid for allowing racial discrimination to persist. In view of the testimony presented to Congress during its consideration of this legislation, it seems fair to say that Congress more likely intended to be expan-

---

[19] Id. at 10-11. See 114 Cong.Rec. 9559 (1968) (remarks of Rep. Celler):

> "To the extent that residential segregation prevents states and municipalities from carrying out their *obligations* to promote equal access and equal opportunity in *all* public aspects of community life, the 14th Amendment authorizes removal of blight." (emphasis added).

sive as to who may sue to achieve the desired national policy, rather than restrictive, as the court below has been. Such a conclusion is consistent with civil rights cases that have rendered liberal interpretations with a view toward eliminating racial discrimination. See *Sullivan v. Little Hunting Park,* 396 U.S. 229, 237 (1969) (holding that a white owner has standing, under 42 U.S.C. §1982, to complain of discrimination against his assignee, who was black); *Jones v. Mayer,* 392 U.S. 409 (1968).

Similarly, nothing in the language of 42 U.S.C. §1982 supports the view of the Ninth Circuit.

**B. Decisions on Standing Are Consistent With Plaintiffs' Right to Sue.**

It is well recognized that each individual citizen is free to choose with whom he wishes to associate and that he has the legal right to protect that freedom, whether it be social, economic, educational, or in terms of his living environment. This Court and others have extended the protection of the law to blacks demanding relief in areas of education;[20] jury selection;[21] domestic relations;[22] employment;[23] discriminatory zoning;[24] and urban renewal projects.[25]

---

[20] *Lee v. Nyquist,* 318 F.Supp. 710 (W.D.N.Y. 1970) (3 judge court), aff'd 402 U.S. 935 (1971); *Brown v. Board of Education,* 347 U.S. 483 (1954); *Rogers v. Paul,* 382 U.S. 198 (1965).

[21] *Carter v. Greene County,* 396 U.S. 320 (1970).

[22] *Loving v. Virginia,* 388 U.S. 1 (1967).

[23] *Johnson v. Georgia Highway Express, Inc.,* 417 F.2d 1122 (5th Cir. 1969).

[24] *Kennedy Park Homes Association, Inc. v. City of Lackawanna,* 436 F.2d 108 (2d Cir. 1970), cert. denied, 401 U.S. 1010 (1971).

[25] *Shannon v. United States Department of Housing and Urban Development,* 436 F.2d 809 (3rd Cir. 1970).

Nor have the courts required that plaintiff be a member of the black race where the effect of permitting him standing would be to protect not only recognizable interests of the plaintiff but of the minority race as well. *Sullivan v. Little Hunting Park,* 396 U.S. 229, supra. In *Walker v. Pointer,* 304 F.Supp. 56 (N.D. Tex. 1969), the court held that white tenants evicted because they entertained black guests had standing under 42 U.S.C. §1982. Similarly, in *Barrows v. Jackson,* 346 U.S. 249 (1953), where a white woman was sued for breach of a racially restrictive covenant, this Court held that she had standing to challenge the illegality and raise the question of another's constitutional rights.

> "Under the peculiar circumstances of this case, we believe the reasons which underlie our rule denying standing to raise another's rights, which is only a rule of practice, are outweighed by the need to protect the fundamental rights which would be denied by permitting the damages action to be maintained." (346 U.S. at 257).

The Court continued:

> "Consistency in the application of rules of practice in this Court does not require us to put the State in such an unequivocal position *simply because the person against whom the injury is directed* is not before the Court to speak for himself. The law will permit respondent to resist any effort to compel her to observe such a covenant . . . *since she is the one in whose charge and keeping reposes the power to continue to use her property to discriminate* . . . The relation between the coercion exerted on respondent and her pos-

> sible pecuniary loss thereby is so close to the purpose of the restrictive covenant, to violate the constitutional rights of those discriminated against, that *respondent is the only effective adversary of the unworthy covenant* . . . She will be permitted to protect herself and, by so doing, close the gap to the use of this covenant, so universally condemned by the courts." (346 U.S. at 259) (emphasis added).

The decision of the Ninth Circuit below adheres woodenly and without purpose to a rule of practice. It would disregard the plain fact that in cases such as the instant case it may well be that only persons such as the plaintiffs have the power to act in furtherance of the national goal of fair housing and would thus be the "only effective adversary" thereof.

Other decisions uphold the standing of mixed plaintiffs to complain of discriminatory acts even where they may not be the direct victims of the discrimination so long as they can allege injury. In *Shannon v. Hud,* 436 F.2d 809, supra note 25, the Court held that white and black persons, who are neither displaced residents nor potential occupants of an urban renewal project, have standing to challenge the project upon an allegation that the concentration of blacks in the project "will adversely affect not only their investments in homes and businesses but even the very quality of their daily lives." (436 F.2d at 818)[26]

---

[26] *In Hackett v. McGuire Brothers, Inc., et al.,* 445 F.2d 442 (3rd Cir. 1971), the court construed the standing issue broadly in favor of a black employee who had applied for and been granted pension benefits but sought nonetheless to enjoin and redress alleged violations of his equal opportunity rights during the period of his em-

The history of these decisions clearly indicates judicial recognition of standing in a civil rights context such as that in the instant case. And, this history lends clear support to the contention that the Fair Housing Act itself was intended to extend standing to persons such as the plaintiffs who pursue their own rights under that Act, as well as to the contention that they have standing under 42 U.S.C. §1982.

Furthermore, plaintiffs in the instant suit satisfy the two-fold test of standing generally announced by this Court. Standing exists, first where the plaintiff "alleges that the challenged action has caused him injury in fact, economic or otherwise," (*Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152 (1970); *Sierra Club v. Morton*, ..... U.S. ..... [40 U.S.L.W. 4397] (1972)); and, second, where the interests of the plaintiff falls "within the zone of interests to be protected or regulated by the statute . . . in question." (*Data Processing Service v. Camp*, 397 U.S. at 153). The first test was unquestionably satisfied by plaintiffs in the instant case. This is as much as admitted by the Ninth Cir-

---

ployment. It interpreted language in Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5), ("a person claiming to be aggrieved"), very similar to that contained in 42 U.S.C. §3610, as showing a "congressional intention to define standing as broadly as is permitted by Article III of the Constitution." (Id. at 446). The court continues:

> "The national public policy reflected both in Title VII . . . and in §1981 may not be frustrated by the development of overly technical judicial doctrines of standing or election of remedies. If the plaintiff is sufficiently aggrieved so that he claims enough injury in fact to present a genuine case or controversy in the Article III sense, then he should have standing to sue in his own right. . . ." (Id. at 446-47).

cuit (446 F.2d at 1162, n. 8). It seems equally clear that they satisfy the second test as well. In this regard, this Court noted, in *Data Processing Service v. Camp*, 397 U.S. at 154:

> "Where statutes are concerned, the trend is toward enlargement of the class of people who may protest administrative action. The whole drive for enlarging the category of aggrieved 'persons' is symptomatic of that trend."

(See *Sierra Club v. Morton*, supra at 19 [40 U.S. L.W. at 4400]).

Coupling the broad Congressional policy of the Fair Housing Act of 1968, with the civil rights cases which clearly enlarge standing where necessary to achieve such policy (*Barrows v. Jackson*, supra), and the general rules of standing set forth by this Court in *Data Processing Service v. Camp* and *Sierra Club v. Morton*, supra, one can hardly escape the conclusion that the plaintiffs in this case must be accorded standing to redress a clear injury from which Congress intended that they be free. This result will have the cumulative and salutary effect of manifesting to minority groups that the courts will not permit the Act to lie idle and will thereby encourage its enforcement by those for whose immediate benefit it was intended.

## II.

**THE CLEAR CONGRESSIONAL POLICY OF PROVIDING FAIR HOUSING DICTATES THAT IT BE ACHIEVED THROUGH ENFORCEMENT OF REMEDIAL STATUTES EITHER BY THE ATTORNEY GENERAL OR BY PRIVATE PERSONS SUCH AS PLAINTIFFS.**

The opinion of the Ninth Circuit appears to restrict the correction of discriminatory patterns and practices of landlords to the Attorney General (446 F.2d at 1162, 1163). Yet, the Attorney General himself, recognizing the severity of this restriction in thwarting the congressional policy of fair housing, has forthrightly and clearly rejected it because it "threatens severely to hamper enforcement of the Act," since he has only a "limited staff for civil rights litigation."[27] Even assuming he had an adequate enforcement staff to handle cases involving a "pattern or practice" of resistance to the Act, what of the case of the landlord of a duplex or triplex who engages, not in a "pattern or practice", but discriminates only occasionally or once. The Attorney General assuredly would not have sufficient staff to prosecute; and the minority applicant is no less injured. Yet, for all of the reasons why such persons do not take advantage of their rights, not only will his grievances go unredressed, but the incumbent tenant, who may wish to assert his right to live in an integrated environment, may remain helpless if the opinion of the Ninth Circuit stands.

---

[27]Brief for the United States as Amicus Curiae, at 32-34, supra, note 17. The limited resources of the Attorney General to enforce civil rights litigation have previously led this Court to encourage private enforcement. *Allen v. State Board of Elections*, 393 U.S. 544, 556-57 (1969); *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 401 (1968).

In other appropriate instances, this Court has recognized the inadequacy of governmental prosecution or prospective injunctive relief. *Perma-Life Mufflers, Inc., et al., v. International Parts Corporation, et al.*, 392 U.S. 134 (1968). That case did not involve the issue of plaintiffs' standing; but it offers an interesting perspective on the issue in the instant case. The court held that nothing in the antitrust laws indicated a congressional intent that the doctrine of *in pari delicto* should constitute a defense to a private antitrust action. There, franchisees were required to accept certain unwanted franchise requirements at the risk of not getting a franchise otherwise attractive to them. This Court permitted them to maintain an action for treble damages, recognizing

> "that the purposes of the anti-trust laws are best served by insuring that the private action will be an ever-present threat to deter anyone contemplating business behavior in violation of the anti-trust laws. The plaintiff who reaps the reward of treble damages may be no less morally reprehensible than the defendant, but the law encourages his suit to further the overriding public policy in favor of competition." (Id. at 139).

Thus, this Court protected the

> "usefulness of the private action as a bulwark of anti-trust enforcement." (Id. at 139).

It would seem painfully ironic, indeed, if not unjust, for the law to permit a private plaintiff with unclean hands to obtain money damages in an effort to protect the sanctity of the antitrust laws, and, at the same

time, turn its head from private individuals who have suffered equal damage yet without any fault or wrongdoing of their own and who seek to protect a national policy of at least equal stature to the antitrust laws.

The experience of the Mid-Peninsula Citizens for Fair Housing in conducting its survey of discrimination in housing (supra, note 6) also suggests that it is only the educated minority applicant, such as a trained person, who is likely to see and understand that discrimination is being practiced. Any of the following means are used to reject blacks: no unit available to blacks; higher rent asked of blacks; later date set for occupancy by blacks; credit checks not required of whites; manager not home for blacks; more stringent lease requirements for blacks; refusal to put blacks on a waiting list, etc.[28] The Mid-Peninsula Citizens' experience also reveals that blacks will avoid looking for housing in certain areas rather than risk the humiliation of refusal. This has its clear effect on attempts to equalize employment opportunities for minorities. A breakthrough in this area may well be neutralized and have little meaning to a minority group member who may obtain employment in Palo Alto, or any other city, if he has to spend large sums of money to travel to work.[29] This is obviously a most

---

[28]Mid-Peninsula Citizens for Fair Housing, Summary of Apartment Discrimination in Palo Alto, California, 2, supra, note 6.

[29]The Mid-Peninsula Citizens for Fair Housing, Recommendations to the Palo Alto Human Relations Commission, 1972 (unpublished report available at the organization office, 460 California Avenue, Palo Alto, California 94306). At 2, it is stated:

unhealthy situation for any community to have to cope with. It behooves cities such as Palo Alto to take every form of action necessary to promote a healthy working as well as living environment for the benefit of the community as a whole, including members of minority groups. The Ninth Circuit itself has recognized the obligation of cities with respect to minorities:

> "Surely, if the environmental benefits of land use planning are to be enjoyed by a city and the quality of life of its residents is accordingly to be improved, the poor cannot be excluded from enjoyment of the benefits. Given the recognized importance of equal opportunities in housing, it may well be, as a matter of law, that it is the responsibility of a city and its planning officials to see that the city's plan as initiated or as it develops accommodates the needs of its low income families, who usually—if not always—are members of minority groups." *Southern Alameda Spanish Speaking Organization v. City of Union City,* 424 F.2d 291, at 295-96 (1970) (dictum).[30]

---

"For local businesses to have meaningful affirmative action programs, the minority employees . . . must have adequate housing opportunities within the community."

(According to the Housing Element of the Palo Alto General Plan, at 1: "Unlike the common suburban city, Palo Alto has emerged as a sub-regional employment center offering jobs as well as housing.") The lack of adequate housing as an impairment to the infusion of minority groups into such employment centers on a county-wide basis is suggested by the SCC-JCCHEP, The Joint Housing Element: 1971, supra, note 4, at 41:

> "The disparity between the amounts of local employment and the distribution of work trips made by local residents suggest severe misfittings between economic opportunities and residential choice."

[30]See text note 19 supra.

Thus, cities in their governmental capacities, as well as minority groups themselves and tenants such as plaintiffs in the instant case, stand to benefit greatly by recognizing plaintiffs' right to stand alongside or in place of the Attorney General in enforcing the Fair Housing Act of 1968 and thereby fulfilling a wholesome national policy.

---

## CONCLUSION

For the reasons stated above, we respectfully request that the decision of the Court below dismissing the complaint herein be reversed, and that the case be remanded to the District Court for expedited proceedings on the merits.

Dated, May 8, 1972.

Respectfully submitted,

ROBERT KEITH BOOTH, JR.,
Senior Assistant City Attorney,
PETER G. STONE,
City Attorney,
MARILYN D. NOREK,
Assistant City Attorney,
STEVEN D. MCMORRIS,
Assistant City Attorney,
Attorneys for City of Palo Alto,
By ROBERT KEITH BOOTH, JR.,
FRED CAPLOE,
Special Counsel,
*Attorneys for Amicus Curiae.*